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**PROPOSED REGULATION ORDER
AIRBORNE TOXIC CONTROL MEASURE
FOR EMISSIONS OF HEXAVALENT CHROMIUM AND CADMIUM
FROM MOTOR VEHICLE AND MOBILE EQUIPMENT COATINGS**

Adopt new section 93112 title 17, California Code of Regulations (CCR), to read as follows:

Title 17 CCR, section 93112. Hexavalent Chromium and Cadmium Airborne Toxic Control Measure -- Motor Vehicle and Mobile Equipment Coatings.

(a) Applicability

- (1) Except as provided in subdivision (b), this section applies to any person who sells, supplies, offers for sale, distributes, or manufactures coatings for use in motor vehicle and/or mobile equipment coating activities in California.
- (2) This section also applies to the owner or operator of any motor vehicle and/or mobile equipment coating facility that uses motor vehicle and/or mobile equipment coating products in California.

(b) Exemptions

- (1) This section shall not apply to any motor vehicle and/or mobile equipment coating products manufactured in California for shipment and use outside of California.
- (2) This section shall not apply to a manufacturer or distributor who sells, supplies, or offers for sale in California a motor vehicle and/or mobile equipment coating product that does not comply with the standards specified in subsection (d), as long as the manufacturer or distributor can demonstrate both that the motor vehicle and/or mobile equipment coating product is for shipment and use outside of California, and that the manufacturer or distributor has taken adequate precautions to assure that the motor vehicle and/or mobile equipment coating product is not distributed to California. This subsection (2) does not apply to motor vehicle and/or mobile equipment coating products that are sold, supplied, or offered for sale by any person to retail outlets in California.

(c) Definitions. For the purposes of this section, the following definitions apply:

- (1) "ASTM" means the American Society for Testing and Materials.
- (2) "Cadmium" (Cd) means elemental cadmium and any compounds or products which contain cadmium.
- (3) "Coating" means a material which is applied to a surface and which forms a film in order to beautify, preserve, repair, or protect such a surface.
- (4) "Consumer" means any person who seeks, purchases, or acquires any motor vehicle and mobile equipment coating product for use in motor vehicle and mobile equipment maintenance and repair activities. Persons acquiring a motor

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vehicle and mobile equipment coating product for resale are not "consumers" of that product.

- (1) "Distributor" means any person to whom a motor vehicle and mobile equipment coating product is sold or supplied for the purposes of resale or distribution in commerce, except that manufacturers, retailers, and consumers are not distributors.
- (2) "Executive Officer" means the Executive Officer of the California Air Resources Board, or his or her delegate.
- (3) "Hexavalent Chromium" (Cr^{+6}) means elemental chromium in the +6 oxidation state and any compounds or products which contain chromium in the +6 oxidation state.
- (4) "Highway" has the same meaning as defined in section 360 of the Vehicle Code.
- (1) "Manufacturer" means any person who imports, manufactures, assembles, produces, packages, repackages, or relabels a motor vehicle or mobile equipment coating product.
- (2) "Mobile Equipment" means any equipment that is designed to be physically capable of being driven or drawn upon rails or a roadway, except for motor vehicles, and components for and from such equipment. Examples of Mobile Equipment include mobile cranes; bulldozers; concrete mixers; tractors; plows; pesticide sprayers; street cleaners; golf carts; hauling equipment used inside and around an airport, dock, depot, and industrial and commercial plants; trains; railcars; truck trailers; implements of husbandry; aircraft ground support equipment; all terrain vehicles; self-propelled wheelchairs, invalid tricycles, and invalid quadricycles.
- (3) "Motor Vehicle " has the same meaning as defined in section 415 of the Vehicle Code.
- (4) "Motor Vehicle and/or Mobile Equipment Coating Activity" means any service, maintenance, repair, restoration, or modification involving the application of coatings to motor vehicles and/or mobile equipment, except chromium and cadmium plating activities.
- (5) "Motor Vehicle and/or Mobile Equipment Coating Product" means any coating used or advertised for use in motor vehicle and/or mobile equipment coating activities.
- (6) "Motor Vehicle and/or Mobile Equipment Coating Facility (Facility)" means any establishment at which coatings are applied to motor vehicles and/or mobile equipment, including, but not limited to, OEM facilities, autobody repair/paint shops, production autobody paint shops, new car dealer repair/paint shops, fleet operator repair/paint shops, custom-made car fabrication facilities, truck body-builders, and residences.
- (7) "OEM" means Original Equipment Manufacturer.

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- (8) "Owner or Operator" means a person who is the owner or the operator of a motor vehicle and/or mobile equipment coating facility.
- (9) "Person" means "person" as defined in Health and Safety Code section 39047.
- (10) "Retailer" means any person who sells, supplies, or offers for sale motor vehicle and/or mobile equipment coating products directly to consumers.
- (11) "Retail Outlet" means any establishment at which motor vehicle and/or mobile equipment coating products are sold, supplied, or offered for sale directly to consumers.

(d) **Standards for Motor Vehicle and/or Mobile Equipment Coating Products**

- (1) Except as provided in subdivision (e), no person shall sell, supply, offer for sale, or manufacture for sale in California any motor vehicle and/or mobile equipment coating product that contains hexavalent chromium or cadmium.
- (2) No owner or operator of a motor vehicle and/or mobile equipment coating facility shall use or possess a motor vehicle and/or mobile equipment coating product prohibited under subdivision (d)(1) after 12 months from the effective date of this regulation.
- (3) For the purposes of subdivision (d)(1), a coating product "contains hexavalent chromium or cadmium" if hexavalent chromium or cadmium was introduced as a pigment or as an agent to impart any property or characteristic to the coating during manufacturing, distribution, or use of the applicable coating.

- (e) **Sell-through of products:** Notwithstanding the provisions of subdivisions (d)(1) and (d)(2), a motor vehicle and/or mobile equipment coating product manufactured prior to the effective date of this regulation may be sold, supplied, or offered for sale for up to six months after the effective date of this regulation. This subdivision does not apply to any motor vehicle and/or mobile equipment coating product which does not display on the product container or package the date on which the product was manufactured, or a code indicating such date.

(f) **Administrative Requirements - Code-Dating**

- (1) Each manufacturer of a motor vehicle and/or mobile equipment coating product subject to section 93112 shall clearly display on each product container or package, the day, month, and year on which the product was manufactured, or a code indicating such date. No person shall erase, alter, deface or otherwise remove or make illegible any date or code-date from any regulated product container or package without the express authorization of the manufacturer.
- (2) If a manufacturer uses a code indicating the date of manufacture for any motor vehicle and/or mobile equipment coating product subject to section 93112, an explanation of the code must be filed with the Executive Officer of the ARB no later than 30 days after the effective date of section 93112.

(g) **Variances**

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- (1) Applications for variances. Any person who cannot comply with the requirements set forth in section 93112 because of extraordinary reasons beyond the person's reasonable control may apply in writing to the Executive Officer for a variance. The variance application shall set forth:
 - (A) the specific grounds upon which the variance is sought;
 - (B) the proposed date(s) by which compliance with the provisions of section 93112 will be achieved; and
 - (C) a compliance report reasonably detailing the method(s) by which compliance will be achieved.
- (2) Notices and public hearings for variances. Upon receipt of a variance application containing the information required in subdivision (g)(1), the Executive Officer shall hold a public hearing to determine whether, under what conditions, and to what extent, a variance from the requirements in section 93112 is necessary and will be permitted. A hearing shall be initiated no later than 75 days after receipt of a variance application. Notice of the time and place of the hearing shall be sent to the applicant by certified mail not less than 30 days prior to the hearing. Notice of the hearing shall also be submitted for publication in the California Regulatory Notice Register and sent to every person who requests such notice, no later than 30 days prior to the hearing. The notice shall state that the parties may, but need not, be represented by counsel at the hearing. At least 30 days prior to the hearing, the variance application shall be made available to the public for inspection. Interested members of the public shall be allowed a reasonable opportunity to testify at the hearing and their testimony shall be considered.
- (3) Treatment of confidential information. Information submitted to the Executive Officer by a variance applicant may be claimed as confidential, and such information shall be handled in accordance with the procedures specified in title 17, California Code of Regulations, sections 91000-91022. The Executive Officer may consider such confidential information in reaching a decision on a variance application.
- (4) Necessary findings for granting variances. No variance shall be granted unless all of the following findings are made:
 - (A) that, because of reasons beyond the reasonable control of the applicant, requiring compliance with section 93112 would result in extraordinary economic hardship;
 - (B) that, the public interest in mitigating the extraordinary hardship to the applicant by issuing the variance outweighs the public interest in avoiding any increased emissions of toxic air contaminants which would result from issuing the variance; and
 - (C) that, the compliance report proposed by the applicant can reasonably be implemented, and will achieve compliance as expeditiously as possible.

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- (5) Variance orders. Any variance order will specify a final compliance date by which the requirements of section 93112 will be achieved. Any variance order shall contain a condition that specifies increments of progress necessary to assure timely compliance, and such other conditions that the Executive Officer, in consideration of the testimony received at the hearing, finds necessary to carry out the purposes of Division 26 of the Health and Safety Code.
- (6) Situations in which variances shall cease to be effective. A variance shall cease to be effective upon failure of the party to whom the variance was granted to comply with any term or condition of the variance.
- (7) Modification and revocation of variances. Upon the application of any person, the Executive Officer may review, and for good cause, modify or revoke a variance from requirements of section 93112 after holding a public hearing in accordance with the provisions of subdivision (g)(2).
- (h) **Test Methods:** The following test methods are incorporated by reference herein, and shall be used to test coatings subject to the provisions of this rule.
 - (1) American Society for Testing and Materials (ASTM) Method D3335-85a (1999), Standard Test Method for Low Concentrations of Lead, Cadmium, and Cobalt in paint by Atomic Absorption Spectroscopy.
 - (2) American Society for Testing and Materials (ASTM) Method D3718-85a (1999), Standard Test Method for Low Concentrations of Chromium in paint by Atomic Absorption Spectroscopy.
 - (3) Alternative methods which are shown to accurately determine the concentration of hexavalent chromium or cadmium compounds in a subject coating product or its emissions may be used upon written approval of the Executive Officer.

Authority cited: Sections 39600, 39601, 39650, 39655, 39656, 39658, 39659, 39665, and 39666, Health and Safety Code.

Reference: Sections 39002, 39600, 39650, 39655, 39656, 39658, 39659, 39665, 39666, and 40000, Health and Safety Code.